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Conditions of use

GENERAL TERMS AND CONDITIONS

The RapidShare AG (hereinafter: "RapidShare") renders web hosting services for its users based on the following provisions.

I. General Provisions

(1) RapidShare provides its users with an infrastructure which enables the users to save any files on Internet servers. After the saving process the respective user receives a download link with which his/her file can be downloaded worldwide via the Internet as well as a deletion link with which the file he/she has uploaded can again be deleted from the server.

(2) The files saved at RapidShare shall be treated confidentially. RapidShare does not have a search function which could help search through the RapidShare infrastructure. RapidShare does not open or view its users files; the files are neither catalogued nor listed in directories.

(3) The services offered by RapidShare are basically free of charge. However, RapidShare offers premium memberships which significantly increase the service capability and ease of use which are subject to costs.

II. Upload Regulations

(1) Basically, users may save any file at RapidShare irrespective of the file format or of the file contents. Excluded, however, are files the possession and/or circulation of which is illegal, such as

- - child pornography content,
- - works the download of which violates third party copyrights;
- - racist or violence-glorifying works,
- - instructions to criminal offences against public peace.

This list is not conclusive.

(2) RapidShare will block access to such contents immediately after obtaining knowledge thereof and will delete them after an examination phase of 14 days. Furthermore, it will delete files which are identical to previously deleted files.

(3) With regard to users who violate these upload regulations, RapidShare is entitled to terminate the contractual relationship without notice, to block the access of the respective users to its services and/or to delete accounts of such users including all contents.

III. Free Use

(1) RapidShare provides its free users with line and memory capacity at its sole discretion. It is entitled to temporarily disallow the saving of new files, to determine limitations regarding the maximum possible file size, to have the download of files only started after a waiting period, to adapt the rate of transmission to the visitor traffic and to limit the amount of the maximum permissible downloads per file. RapidShare points out that in order to clean up its hard drives it deletes such files which were uploaded by free users and which were not accessed for a time period of 60 days.

(2) Users of the RapidShare infrastructure have the opportunity of registering so-called "Collector's Accounts". Free users can upgrade the functionality of the RapidShare services by means of those Collector's Accounts and can have all files which have been uploaded via this account displayed and managed. Collector's Accounts which do not contain any files are automatically deleted if there has not been a login for a period of 30 days.

IV. Premium Membership

(1) Apart from the free use indicated under section III, users of the RapidShare infrastructure have the opportunity of establishing premium memberships subject to costs with which they can make use of additional services.

(2) RapidShare shall - for the duration of his/her premium membership - provide each user with web space in which the user can save his/her own files. Automatic file deletions according to section III (1) sentence 3 do not take place for premium users for as long as the data saved for a user does not exceed the total amount of 50 gigabytes. Furthermore, RapidShare offers its premium users the opportunity of downloading without a waiting period and at a maximum speed a data volume of 5 gigabytes ("Download-Traffic") on a calendar day basis. RapidShare will increase each premium users' Download-Traffic by 5 gigabytes per calendar day, regardless of a user's consumption of Download-Traffic. The total amount of Download-Traffic cannot exceed 25 gigabytes per calendar day.

(3) The run-time for new premium memberships begins as soon as the user has logged on in his/her membership area (Premium Account) for the first time, however

at the latest 21 days after the membership has been established. Premium memberships are not to be resold or transferred to third parties. The user names and passwords which are communicated to them. A transmission of user names and passwords to third parties is prohibited. A businesslike resale of premium memberships is only permitted with the consent of RapidShare. RapidShare reserves the right to disable memberships which are used directly or indirectly by several persons or which have been resold in a businesslike manner without the consent of RapidShare. RapidShare will not compensate damages caused by users who give away their passwords to third parties and/or by hackers who steal personal data/passwords from users.

(4) RapidShare would only like to render its services to customers who have made a conscious choice of becoming a member. Therefore, premium memberships are not automatically prolonged but rather end with the expiration of the booked time period without a cancellation being necessary. However, RapidShare reminds its premium users via email of an upcoming expiration of premium memberships and offers users the opportunity of prolonging their membership.

V. Payment

(1) For the acquisition of a premium membership RapidShare offers its customers the possibility to settle the accruing fee for the membership by resorting to the payment service provider PayPal, via bank transfer or via their telephone bill by the way of the PayByCall procedure.

(2) Users who choose payment via the service provider PayPal will be transferred to an SSL encrypted website at which they can authorise the payment via an already existing PayPal account or via credit card. Afterwards PayPal will transfer the user back to the website of RapidShare. As soon as PayPal has confirmed the receipt of payment to RapidShare, RapidShare will indicate the user's access data in the browser and will send it to him/her via email. Direct payment via credit card without a PayPal account may temporarily be deactivated. In such a case, a PayPal account must be registered for the payment.

(3) To users who choose payment via their telephone bill by means of the PayByCall procedure RapidShare will display a website in which premium rate service telephone numbers for various countries and the respective charges per minute are indicated. In order to acquire a premium membership via the PayByCall procedure, the user will be required to keep the website displayed by RapidShare open, to then call the premium rate service telephone number valid for his/her country and to maintain the phone connection until it is automatically disconnected. After the telephone call has been concluded, RapidShare will display a new website on which the user shall be informed of the access data for his/her Premium Account. RapidShare explicitly points out that PayByCall is not available in all countries.

(4) To users who choose payment via bank transfer a website containing instructions for the payment procedure will be displayed by RapidShare. RapidShare explicitly points out that the email address at which the user is to be informed of the access data for his/her Premium Account must be indicated within the reference of a bank transfer. Bank fees relating to the bank transfer, in particular costs for foreign bank transfers, shall be borne by the user. RapidShare will activate the Premium Account only after receipt of the full membership fee in its bank account.

(5) RapidShare explicitly points out that it will immediately block premium memberships if the payments made for these memberships are back posted, if debit balances or credit card charges fall through or if payment service providers preventively back post a payment due to irregularities. RapidShare is not in a position to clarify the reasons for back postings and it will refer the user to his/her bank or the payment provider which he/she has selected in cases of such payment difficulties.

VI. Reseller

(1) In many countries the payment of Premium Accounts is not possible by the payment methods stated under section V.. Therefore, in such countries, RapidShare cooperates with resellers who sell premium memberships on their own behalf and on their own account. You can find a list of the resellers authorised by RapidShare here: [Reseller](#)

(2) RapidShare points out that resellers are not employees of RapidShare and do not conclude any contracts on behalf of RapidShare. Users who acquire premium memberships for RapidShare via resellers enter into a contractual relationship solely with their respective reseller. RapidShare will not attend to any support enquiries which refer to the payment procedures with resellers.

(3) RapidShare points out that there are various persons and companies whom are not authorised resellers who which nevertheless pretend to be selling premium memberships on account of RapidShare. RapidShare does not assume any support for premium memberships which have been acquired from such third parties, neither in regard to the payment procedure nor in regard to the validity period or the functional capability of those premium memberships offered by such third parties.

VII. Availability; Data Security

(1) RapidShare will provide the functions stated under section I. (1), in principle, 24 hours a day and seven days a week, however, only with a guaranteed availability rate of 99.5% as a monthly average. Excluded hereof are time periods in which the servers are not accessible via the Internet due to technical or other problems which are not within RapidShare's control (third party fault, force majeure, etc.).

(2) RapidShare strives to organise maintenance work as quickly as possible. RapidShare will limit the access to its service temporarily only in the event that the security or the functional capability of the network operations requires it imperatively. Should such limitations become necessary (for instance in order to defend against hacker attacks), RapidShare will immediately inform its users about the background of this limitation. Should it be foreseeable that downtimes for maintenance or software updates take longer than three hours, RapidShare will inform its users of this at least three days before executing the respective work.

VIII. RapidPoints

(1) RapidShare appreciates it when users apply its service to send files to third parties. Therefore, as a basic principle RapidShare credits every user of a Premium or Collector's Account with one point ("RapidPoint") as soon as one of the uploaded files from this user is downloaded by a third party. Particulars regarding the evaluation and counting system and further information about which conditions a file must fulfil in order to participate in the RapidPoint Programme can be found here: [FAQ](#)

(2) RapidPoints which have been collected at RapidShare can be exchanged for a Premium Account or a bonus which RapidShare presents on the subpage "Rewards". Cash payment of the RapidPoints value is excluded. RapidPoints, the Premium Accounts established with RapidPoints and the claims for delivery of bonuses are not transferable to third parties.

(3) RapidShare randomly examines whether the credited RapidPoints on the points account were acquired in accordance with the terms of use, in particular before exchanging the RapidPoints for bonuses. RapidShare reserves the right to exclude users from the Rewards Programme and to take further action if it has proof or a reasonable suspicion that the RapidPoints credited to the user's account were acquired by violating the terms of use. This applies in particular, but not limited to, if

1. (a) files which violate the copyrights of third parties are offered for download;
2. (b) users download files which they have uploaded themselves;
3. (c) downloads are only executed for the purpose of receiving RapidPoints or rather generating them for a third party.

IX. Miscellaneous

(1) RapidShare will inform the users of Premium and Collector's Accounts via email about amendments to the General Terms and Conditions before they come into effect. In the event that amendments have been effected to the user's disadvantage, he/she is entitled to cancel the contractual relationship within a time limit of four weeks as of receipt of the notification of change provided that his/her premium membership does not end before the legal validity of the altered General Terms and Conditions. Should the user not make use of his/her right of cancellation, the alterations are presumed to be accepted and become an effective integral part of the contract. When communicating newly composed GTC, RapidShare is obligated to again specifically point out this provision to its Premium and Collector's Account users.

(2) Should a term of the contract or a provision of the General Terms and Conditions be or become entirely or partially ineffective, this shall not affect the validity of the rest of the contract or the General Terms and Conditions. In lieu of the invalid condition such valid provision shall be incorporated as shall best approximate the actual

purpose of the stipulated condition. The same shall also apply should any omission in the agreement become apparent.

Cham, Jan. 2009

At violation of our Conditions of use, we are authorized to block your access and delete your files. If you write programs aiming to violate our Conditions of Use, you will be prosecuted and made liable for any losses occurred.

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